

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEA SHEPHERD LEGAL,

Plaintiff,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION, *et*
al.,

Defendants.

Case No. C19-463 JLR

STIPULATED MOTION AND
~~PROPOSED~~ ORDER FOR RELIEF
FROM 26(F) CONFERENCE,
INITIAL DISCLOSURES, AND
JOINT STATUS REPORT

Noted for Consideration:
May 28, 2019



Plaintiff SEA SHEPHERD LEGAL filed the above-captioned lawsuit under the Freedom of Information Act ("FOIA") against Defendants NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA") and NATIONAL MARINE FISHERIES SERVICES ("NMFS"), seeking disclosure of certain documents.

For the reasons stated below, the parties respectfully request that the Court vacate the Rule 26 deadlines, and instead allow the parties to submit a joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has "improperly" withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question

1 of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the
2 procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*,
3 637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc'ns*,
4 *LLC v. Dep't of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that
5 the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f),
6 requiring the parties to prepare a discovery plan, are not appropriate in this case at this
7 time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That
8 being said, the Plaintiff reserves the right to request discovery should evidence of bad
9 faith or other grounds for discovery emerge.

10 Thus far, the parties have worked cooperatively in an attempt to resolve this
11 litigation without motion practice. Defendants intend to produce the requested
12 documents imminently with a final determination letter. As further discussion is
13 expected after the production, counsel for the parties intend to continue to work together
14 on any issues. If at any time in the next 60 days it becomes apparent that resolution
15 between the parties is not feasible, the parties will submit a joint briefing schedule to the
16 Court.

17 **SO STIPULATED.**

18 Dated this 28th day of May 2019.

19
20 s/ Brett W. Sommermeyer
21 BRETT W. SOMMERMEYER, WSBA # 30003

22 s/ Catherine E. Pruett
23 CATHERINE E. PRUETT, WA BAR # 35140

24 SEA SHEPHERD LEGAL
25 2226 Eastlake Avenue East, No. 108
26 Seattle, WA 98102
27 Phone: (206) 504-1600
28 Email: brett@seashepherdlegal.org
Email: catherine@seashepherdlegal.org

Attorneys for Plaintiff

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2 **SO STIPULATED.**

3 Dated this 28th day of February 2019.

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5 s/ Michelle R. Lambert
6 MICHELLE R. LAMBERT, NY # 4666657
7 Assistant United States Attorney
8 United States Attorney's Office
9 1201 Pacific Avenue, Suite 700
10 Tacoma, Washington 98402
11 Phone: 253-428-3824
12 Email: michelle.lambert@usdoj.gov

13
14 Attorney for Defendants

15
16
17 **ORDER**

18 **IT IS SO ORDERED.**

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20 Dated this ²⁴~~28~~ day of May 2019.

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22 
23 JAMES L. ROBART
24 United States District Judge
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